

105TH CONGRESS
1ST SESSION

H. R. 2021

To provide for competition between forms of motor vehicle insurance, to permit an owner of a motor vehicle to choose the most appropriate form of insurance for that person, to guarantee affordable premiums, to provide for more adequate and timely compensation for accident victims, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 24, 1997

Mr. ARMEY (for himself, Mr. MORAN of Virginia, Mr. SAXTON, Mr. COX of California, and Mr. MCINTOSH) introduced the following bill; which was referred to the Committee on Commerce

A BILL

To provide for competition between forms of motor vehicle insurance, to permit an owner of a motor vehicle to choose the most appropriate form of insurance for that person, to guarantee affordable premiums, to provide for more adequate and timely compensation for accident victims, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Auto Choice Reform
5 Act of 1997”.

1 **SEC. 2. FINDINGS.**

2 Congress finds that—

3 (1) the costs of operating a motor vehicle are
4 excessive due in substantial part to the legal and ad-
5 ministrative costs associated with the resolution of
6 claims under the tort liability insurance system;

7 (2) the tort liability insurance system often re-
8 sults in—

9 (A) the failure to provide compensation
10 commensurate with loss;

11 (B) an unreasonable delay in the payment
12 of benefits; and

13 (C) the expenditure of an excessive amount
14 for legal fees;

15 (3) the incentives of the tort liability insurance
16 system for motor vehicles are distorted, and result
17 in—

18 (A) significant fraud in the claims process,
19 which exacerbates the level of distrust of many
20 individuals in the United States with respect to
21 the legal process and the rule of law;

22 (B) significant, wasteful, fraudulent, and
23 costly overuse and abuse of scarce health care
24 resources and services;

25 (C) unbearable cost burdens on low-income
26 individuals, imposing on them the Hobson's

1 choice of driving on an unlawful, uninsured
2 basis or foregoing essential needs, such as food
3 and adequate shelter;

4 (D) significant reductions in, access to,
5 and purchases of, motor vehicles, which—

6 (i) damage the economic well-being of
7 many low-income individuals; and

8 (ii) cause unnecessary harm to a criti-
9 cal component of the economy of the
10 United States;

11 (E) significant deterioration of the eco-
12 nomic well-being of the majority of major cities
13 in the United States through the imposition of
14 the massive cost of the tort liability system
15 that—

16 (i) places a disproportionate burden
17 on urban residents; and

18 (ii) contributes to the abandonment of
19 the cities by many residents who are able
20 to achieve substantial after-tax savings on
21 automobile insurance premiums by moving
22 to adjacent suburban communities; and

23 (F) significant inability to achieve market-
24 based discounts in insurance rates for owners of

1 safer cars, which reduces the level of safety for
2 drivers and passengers of motor vehicles;

3 (4) insurance to indemnify individuals for per-
4 sonal injuries arising from motor vehicle collisions is
5 frequently unavailable at a reasonable cost because
6 of the potential liability for third-party tort claims;

7 (5) a system that gives consumers the oppor-
8 tunity to insure themselves and that separates eco-
9 nomic and noneconomic damages for the purposes of
10 purchasing insurance would provide significant cost
11 savings to drivers of motor vehicles;

12 (6) a system that enables individuals to choose
13 the form of motor vehicle insurance that best suits
14 their needs would—

15 (A) enhance individual freedom;

16 (B) reduce the cost of motor vehicle insur-
17 ance; and

18 (C) increase average compensation in the
19 event of an accident; and

20 (7) a system that targets and emphasizes the
21 scourge of those individuals who drive under the in-
22 fluence of drugs or alcohol will further deter such
23 dangerous and unlawful conduct.

1 **SEC. 3. PURPOSE.**

2 The purpose of this Act is to allow consumers of
3 motor vehicle insurance to choose between—

4 (1) an insurance system that provides substan-
5 tially the same remedies as are available under ap-
6 plicable State law; and

7 (2) a predominately first-party insurance sys-
8 tem that provides for—

9 (A) more comprehensive recovery of eco-
10 nomic loss in a shorter period of time; and

11 (B) the right to sue negligent drivers for
12 any uncompensated economic losses.

13 **SEC. 4. DEFINITIONS.**

14 In this Act:

15 (1) ACCIDENT.—The term “accident” means an
16 unforeseen or unplanned event that—

17 (A) causes loss or injury; and

18 (B) arises from the operation, mainte-
19 nance, or use of a motor vehicle.

20 (2) ADD-ON LAW.—The term “add-on law”
21 means a State law that provides that persons in-
22 jured in motor vehicle accidents—

23 (A) are compensated without regard to
24 fault for economic loss; and

25 (B) have the right to claim without any
26 limitation for noneconomic loss based on fault.

1 (3) ECONOMIC LOSS.—The term “economic
2 loss” means any objectively verifiable pecuniary loss
3 resulting from injury caused by an accident, includ-
4 ing—

5 (A) reasonable and necessary medical and
6 rehabilitation expenses;

7 (B) loss of earnings;

8 (C) burial costs;

9 (D) replacement services loss;

10 (E) costs of making reasonable accom-
11 modations to a personal residence to make the
12 residence more habitable for an injured individ-
13 ual; and

14 (F) loss of employment, loss of employ-
15 ment opportunities, or loss of business for indi-
16 viduals, to the extent recovery for such losses is
17 allowed under applicable State law.

18 (4) FINANCIAL RESPONSIBILITY LAW.—The
19 term “financial responsibility law” means a law (in-
20 cluding a law requiring compulsory coverage) penal-
21 izing motorists for failing to carry defined limits of
22 tort liability insurance covering motor vehicle acci-
23 dents.

24 (5) INJURY.—The term “injury” means bodily
25 injury, sickness, disease, or death.

1 (6) INSURER.—The term “insurer” means—

2 (A) any person who is engaged in the busi-
3 ness of issuing or delivering motor vehicle in-
4 surance policies (including where otherwise ap-
5 propriate an insurance agent); or

6 (B) any person who is self-insured within
7 the meaning of applicable State law.

8 (7) INTENTIONAL MISCONDUCT.—

9 (A) IN GENERAL.—Except as provided in
10 subparagraph (B), the term “intentional mis-
11 conduct” means conduct—

12 (i) with respect to which harm is in-
13 tentiously caused or attempted to be
14 caused by a person who acts or fails to act
15 for the purpose of causing harm, or with
16 knowledge that harm is substantially cer-
17 tain to result from that action or failure to
18 act; and

19 (ii) that causes or substantially con-
20 tributes to the harm that is the subject of
21 a claim.

22 (B) CLARIFICATION.—For purposes of this
23 paragraph, a person does not intentionally
24 cause or attempt to cause harm—

1 (i) solely because that person acts or
2 fails to act with the understanding that the
3 action or failure to act creates a grave risk
4 of causing harm; or

5 (ii) if the act or omission by that per-
6 son causing bodily harm is for the purpose
7 of averting bodily harm to that person or
8 another person.

9 (8) MOTOR VEHICLE.—The term “motor vehi-
10 cle” means a vehicle of any kind required to be reg-
11 istered under the provisions of the applicable State
12 law relating to motor vehicles.

13 (9) NO-FAULT MOTOR VEHICLE LAW.—The
14 term “no-fault motor vehicle law” means a State law
15 that provides that—

16 (A) persons injured in motor vehicle acci-
17 dents are paid compensation without regard to
18 fault for their economic loss that results from
19 injury; and

20 (B) in return for the payment referred to
21 in subparagraph (A), claims based on fault in-
22 cluding claims for noneconomic loss, are limited
23 to a defined extent.

1 (10) NONECONOMIC LOSS.—The term “non-
2 economic loss” means such term as defined by State
3 law.

4 (11) OCCUPY.—The term “occupy” means, with
5 respect to the operation, maintenance, or use of a
6 motor vehicle, to be in or on a motor vehicle or to
7 be engaged in the immediate act of entering into or
8 alighting from a motor vehicle before or after its use
9 for transportation.

10 (12) OPERATION, MAINTENANCE, OR USE OF A
11 MOTOR VEHICLE.—

12 (A) IN GENERAL.—The term “operation,
13 maintenance, or use of a motor vehicle” means
14 occupying a motor vehicle.

15 (B) EXCLUSIONS.—The term “operation,
16 maintenance, or use of a motor vehicle” does
17 not include—

18 (i) conduct within the course of a
19 business of manufacturing, sale, repairing,
20 servicing, or otherwise maintaining motor
21 vehicles, unless the conduct occurs outside
22 of the scope of the business activity; or

23 (ii) for private passenger vehicle in-
24 sured, conduct within the course of loading
25 or unloading a motor vehicle, unless the

1 conduct occurs while occupying the motor
2 vehicle.

3 (13) PERSON.—The term “person” means any
4 individual, corporation, company, association, firm,
5 partnership, society, joint stock company, or any
6 other entity, including any governmental entity.

7 (14) PERSONAL PROTECTION INSURANCE.—The
8 term “personal protection insurance” means insur-
9 ance that provides for—

10 (A) benefits to an insured person for eco-
11 nomic loss without regard to fault for injury re-
12 sulting from a motor vehicle accident; and

13 (B) a waiver of tort claims in accordance
14 with this Act.

15 (15) REPLACEMENT SERVICES LOSS.—The
16 term “replacement services loss” means expenses
17 reasonably incurred in obtaining ordinary and nec-
18 essary services from other persons who are not mem-
19 bers of the injured person’s household, in lieu of the
20 services the injured person would have performed for
21 the benefit of the household.

22 (16) RESIDENT RELATIVE OR DEPENDENT.—
23 The term “resident relative or dependent” means a
24 person who—

1 (A) is related to the owner of a motor vehi-
2 cle by blood, marriage, adoption, or otherwise
3 (including a dependent receiving financial serv-
4 ices or support from such owner); and

5 (B)(i) resides in the same household as the
6 owner of the motor vehicle at the time of the
7 accident; or

8 (ii) usually makes a home in the same
9 family unit as that owner, even though that
10 person may temporarily live elsewhere.

11 (17) STATE.—The term “State” means any
12 State of the United States, the District of Columbia,
13 the Commonwealth of Puerto Rico, Guam, the Unit-
14 ed States Virgin Islands, American Samoa, the Com-
15 monwealth of the Northern Mariana Islands, the
16 Trust Territories of the Pacific Islands, and any
17 other territory or possession of the United States.

18 (18) TORT LIABILITY.—The term “tort liabil-
19 ity” means the legal obligation to pay damages for
20 an injury adjudged to have been committed by a
21 tort-feasor.

22 (19) TORT LIABILITY INSURANCE.—The term
23 “tort liability insurance” means a contract of insur-
24 ance under which an insurer agrees to pay, on behalf
25 of an insured, damages that the insured is obligated

1 to pay to a third person because of the liability of
2 the insured to that person.

3 (20) TORT MAINTENANCE COVERAGE.—

4 (A) IN GENERAL.—The term “tort mainte-
5 nance coverage” means insurance coverage
6 under which a person described in subpara-
7 graph (B), if involved in an accident with a per-
8 son covered by personal protection insurance,
9 retains a right to claim for injury based on
10 fault for economic and noneconomic losses
11 under applicable State law, without modifica-
12 tion by any other provision of this Act.

13 (B) TORT MAINTENANCE INSURED.—A
14 person described in this subparagraph is a per-
15 son covered by the form of insurance described
16 in section 5(a)(2).

17 (C) RESPONSIBILITY FOR PAYMENT.—The
18 responsibility for payment for any claim under
19 subparagraph (A) is assumed by the insurer of
20 the person with tort maintenance coverage to
21 the extent of such coverage.

22 (21) UNCOMPENSATED ECONOMIC LOSS.—

23 (A) IN GENERAL.—The term “uncompen-
24 sated economic loss” means economic loss pay-
25 able based on fault.

1 (B) ATTORNEYS' FEES.—The term in-
2 cludes a reasonable attorney's fee calculated on
3 the basis of the value of the attorney's efforts
4 as reflected in payment to the attorney's client.

5 (C) EXCLUSIONS.—The term does not in-
6 clude amounts paid or payable under—

7 (i) personal protection insurance;

8 (ii) tort maintenance coverage;

9 (iii) no-fault, uninsured motorist cov-
10 erage, under insured motorist coverage, or
11 add-on motor vehicle insurance;

12 (iv) Federal, State, or private disabil-
13 ity or sickness programs;

14 (v) Federal, State, or private health
15 insurance programs;

16 (vi) employer wage continuation pro-
17 grams; or

18 (vii) workers' compensation or similar
19 occupational compensation laws.

20 (22) UNINSURED MOTORIST.—The term “unin-
21 sured motorist” means the owner of a motor vehicle,
22 including the resident relatives or dependents of the
23 owner, who is uninsured under either the personal
24 protection system or the tort maintenance system
25 described in section 5(a)—

1 (A) at the limits prescribed by the applica-
2 ble State financial responsibility law; or

3 (B) an amount prescribed under section
4 5(b)(1)(A).

5 **SEC. 5. AUTO CHOICE INSURANCE SYSTEM.**

6 (a) OPERATION OF THE RIGHT TO CHOOSE.—Under
7 this Act, an insurer may offer a choice between the follow-
8 ing insurance systems:

9 (1) PERSONAL PROTECTION SYSTEM.—A person
10 may choose insurance under a system that provides
11 for personal protection insurance for that person any
12 employees, permissive user, and any resident relative
13 or dependent of that person.

14 (2) TORT MAINTENANCE SYSTEM.—A person
15 may choose insurance under a system that provides
16 for the form of motor vehicle insurance (including
17 tort liability, no-fault, add-on, or uninsured motor
18 vehicle insurance) that is otherwise required in the
19 State in which the person is insured.

20 (b) PERSONAL PROTECTION SYSTEM.—

21 (1) MINIMUM POLICY REQUIREMENTS.—In
22 order for a personal protection insurance policy to be
23 covered by this Act, a motor vehicle insurance policy
24 issued by an insurer shall, at a minimum—

1 (A) provide personal protection insurance
2 coverage—

3 (i) with no per accident limit; and

4 (ii) in coverage amounts equal to the
5 greater of—

6 (I) the minimum per person lim-
7 its of liability insurance for personal
8 injury under the applicable State fi-
9 nancial responsibility law; or

10 (II) in a State covered by a no-
11 fault motor vehicle insurance law, the
12 minimum level of insurance required
13 for no-fault benefits;

14 (B) contain provisions for a waiver of cer-
15 tain tort rights in accordance with this Act; and

16 (C) contain provisions under the applicable
17 State financial responsibility law relating to li-
18 ability for—

19 (i) property damage; and

20 (ii) bodily injury to protect third par-
21 ties whose rights to recover both economic
22 and noneconomic loss are not affected by
23 the immunities provided under this Act for
24 those persons choosing personal protection
25 insurance coverage.

1 (2) SUPERSEDING PROVISION.—This Act super-
2 sedes a State law to the extent that, with respect to
3 the issuance of a personal protection insurance pol-
4 icy, the State law—

5 (A) would otherwise bar a provision that
6 provides for the personal protection authoriza-
7 tions and accompanying immunities set forth in
8 this Act; or

9 (B) is otherwise inconsistent with the re-
10 quirements of this Act.

11 (3) PRIMACY OF PAYMENT.—

12 (A) IN GENERAL.—Personal protection in-
13 surance benefits shall be primary but may be
14 reduced by an amount equal to any benefits
15 provided or required to be provided under an
16 applicable Federal or State law for workers'
17 compensation or any State-required nonoccupa-
18 tional disability insurance.

19 (B) REIMBURSEMENT OF PAYORS.—

20 (i) IN GENERAL.—Subject to subpara-
21 graph (A), a personal protection insurer
22 may take appropriate measures to ensure
23 that any person otherwise eligible for per-
24 sonal protection benefits who has been
25 paid or is being paid for losses payable by

1 personal protection insurance from a
2 source other than the applicable personal
3 protection insurer shall not receive multiple
4 payment for those losses.

5 (ii) ACCRUAL OF RIGHTS.—Any right
6 to payment for losses referred to in clause
7 (i) from a personal protection insurer ac-
8 crues only to that payor. Payments by a
9 payor referred to in clause (i) shall not be
10 counted against personal protection limits
11 for personal protection insurance until
12 such time as the payor is reimbursed
13 under this subparagraph.

14 (4) PROMPT AND PERIODIC PAYMENT.—

15 (A) IN GENERAL.—A personal protection
16 insurer may pay personal protection benefits
17 periodically as losses accrue.

18 (B) LATE PAYMENT.—Unless the treat-
19 ment or expenses related to the treatment are
20 in reasonable dispute, a personal protection in-
21 surer who does not pay a claim for economic
22 loss covered by a personal protection insurance
23 policy issued under this Act within 30 days
24 after payment is due, shall pay—

1 (i)(I) the loss compounded at a rate of
2 24 percent per annum, as liquidated dam-
3 ages and in lieu of any penalty or exem-
4 plary damages; and

5 (II) a reasonable attorney's fee cal-
6 culated on the basis of the value of the at-
7 torney's efforts as reflected in payment to
8 the attorney's client, or

9 (ii) at the discretion of the State, such
10 penalties as State law may prescribe.

11 (C) ADMINISTRATION OF PERSONAL PRO-
12 TECTION BENEFITS.—To the extent consistent
13 with this Act, any applicable provision of a
14 State no-fault motor vehicle law or add-on law
15 governing the administration of payment of
16 benefits without reference to fault shall apply to
17 the payment of benefits under personal protec-
18 tion insurance under this subsection.

19 (5) MOTOR VEHICLES WITH FEWER THAN 4
20 LOAD-BEARING WHEELS.—A personal protection in-
21 surer may offer, but shall not require, personal pro-
22 tection coverage of any motor vehicle that has fewer
23 than 4 load-bearing wheels, not including the wheels
24 of an attachment to the motor vehicle.

1 (6) AUTHORIZATIONS FOR PERSONAL PROTEC-
2 TION INSURERS.—A personal protection insurer may
3 write personal protection coverage—

4 (A)(i) without any deductible; or

5 (ii) subject to reasonable deductibles, appli-
6 cable in an amount not to exceed \$1,000 per
7 person per accident for private passenger vehi-
8 cle insureds;

9 (B) with an exclusion of coverage for per-
10 sons whose losses are caused by driving under
11 the influence of alcohol or illegal drugs;

12 (C) at appropriately reduced premium
13 rates, deductibles and exclusions reasonably re-
14 lated to health, disability, and accident coverage
15 on an insured person; and

16 (D) the deductibles and exclusions de-
17 scribed in subparagraphs (A) and (C) shall
18 apply only to—

19 (i) the person named in the applicable
20 insurance policy;

21 (ii) the resident relatives or depend-
22 ents of the person described in clause (i);

23 and

24 (iii) employees and permissive users.

25 (c) TORT MAINTENANCE SYSTEM.—

1 (1) REQUIRED TORT MAINTENANCE COV-
2 ERAGE.—The coverage for a person who chooses in-
3 surance under subsection (a)(2) shall include tort
4 maintenance coverage at a level that is at least
5 equivalent to the level of insurance required under
6 the applicable State financial responsibility law for
7 bodily injury liability.

8 (2) ADMINISTRATION OF TORT MAINTENANCE
9 COVERAGE BENEFITS.—To the extent consistent
10 with this Act, any applicable provision of a State law
11 governing the administration of payment of benefits
12 under uninsured or underinsured motorist coverage
13 applies to the payment of benefits under tort main-
14 tenance coverage under section 5(c).

15 (d) EFFECT OF CHOICE ON RESIDENT RELATIVES,
16 EMPLOYEES, PERMISSIVE USERS, AND DEPENDENTS.—

17 (1) IN GENERAL.—Except as provided in para-
18 graph (2), a person who chooses either personal pro-
19 tection insurance or tort maintenance coverage also
20 binds the resident relatives, employees, and permis-
21 sive users, and dependents of that person.

22 (2) EXCEPTION.—An adult resident relative or
23 a dependent of a person described in paragraph (1)
24 may select the form of insurance that that person

1 does not select if the adult relative makes that selec-
2 tion expressly in writing.

3 (3) IMPLIED CONSENT.—In any case in which
4 the resident relative, employees, permissive users, or
5 dependent is injured in a motor vehicle accident, the
6 coverage of such person shall be the same as the
7 person described in paragraph (1).

8 (4) TERMS AND CONDITIONS.—Insurers may
9 specify reasonable terms and conditions governing
10 the commencement, duration, and application of the
11 chosen coverage depending on the number of motor
12 vehicles and owners thereof in a household.

13 (e) RULES TO ENCOURAGE UNIFORMITY OF
14 CHOICE.—In order to minimize conflict between the 2 op-
15 tions described in subsection (d), insurers may maintain
16 and apply underwriting rules that encourage uniformity
17 within a household.

18 (f) FAILURE TO ELECT TYPE OF INSURANCE.—

19 (1) IN GENERAL.—Any person who fails to elect
20 a type of insurance under this section shall be
21 deemed to have elected insurance under the tort
22 maintenance system in effect in that State.

23 (2) RULE OF CONSTRUCTION.—This subsection
24 shall not be construed to prevent a State from en-
25 acting a law that deems a person who fails to elect

1 a type of insurance under this section to have elect-
2 ed insurance under the personal protection system.

3 (g) CONSUMER INFORMATION PROGRAM.—The State
4 official charged with jurisdiction over insurance rates for
5 motor vehicles shall establish and maintain a program de-
6 signed to ensure that consumers are adequately informed
7 about—

8 (1) the comparative cost of insurance under the
9 personal protection system and the tort maintenance
10 system; and

11 (2) the benefits, rights, and obligations of in-
12 surers and insureds under each system.

13 (h) COMPLIANCE WITH STATE LAW.—Any person
14 who offers, sells, or solicits the purchase of insurance
15 under the personal protection system or the tort mainte-
16 nance system shall comply fully with applicable State li-
17 censure, qualification, testing, examination, and continu-
18 ing education requirements.

19 **SEC. 6. SOURCE OF COMPENSATION IN CASES OF ACCIDEN-**
20 **TAL INJURY.**

21 (a) ACCIDENTS INVOLVING PERSONS CHOOSING THE
22 TORT MAINTENANCE SYSTEM.—A person described in
23 section 5(a)(2) who is involved in an accident with another
24 person shall be subject to applicable tort law for injury
25 except that, based on fault, that person—

1 (1) may claim against any person covered by
 2 personal protection insurance only for uncompen-
 3 sated economic loss; and

4 (2) may be claimed against by a person covered
 5 by personal protection insurance only for uncompen-
 6 sated economic loss.

7 (b) ACCIDENTS INVOLVING PERSONS WITH PER-
 8 SONAL PROTECTION INSURANCE.—

9 (1) RIGHT TO RECOVER ECONOMIC LOSS.—A
 10 person covered by a personal protection insurance
 11 policy who is injured in an accident is compensated
 12 under that policy only for economic loss, without re-
 13 gard to fault.

14 (2) RIGHT TO SUE FOR UNCOMPENSATED ECO-
 15 NOMIC LOSS BASED ON FAULT.—If a person who
 16 chooses personal protection insurance is—

17 (A) involved in an accident with a person
 18 insured under either the personal protection
 19 system or tort maintenance system under sec-
 20 tion 5(a); and

21 (B) sustains uncompensated economic loss,
 22 that person shall have the right to claim against the
 23 other person involved in the accident for that loss
 24 based on fault.

1 (c) ACCIDENTS INVOLVING PERSONS WITH PER-
 2 SONAL PROTECTION INSURANCE AND PERSONS WHO ARE
 3 UNLAWFULLY UNINSURED.—

4 (1) IN GENERAL.—A person covered by per-
 5 sonal protection insurance who is involved in an ac-
 6 cident with an uninsured motorist shall—

7 (A) be compensated under that insured
 8 person's insurance policy for economic loss
 9 without regard to fault; and

10 (B) have the right to claim against the un-
 11 insured motorist for economic loss and for non-
 12 economic loss based on fault.

13 (2) FORFEITURE OF RIGHTS.—An uninsured
 14 motorist forfeits the right to claim against a motor-
 15 ist who has chosen personal protection insurance
 16 for—

17 (A) noneconomic loss; and

18 (B) economic loss in an amount up to the
 19 amount of per-person bodily injury limits man-
 20 dated by the applicable State financial respon-
 21 sibility law.

22 (d) ACCIDENTS INVOLVING MOTORISTS UNDER THE
 23 INFLUENCE OF ALCOHOL OR ILLEGAL DRUGS OR ENGAG-
 24 ING IN INTENTIONAL MISCONDUCT.—A person who is in-

1 sured under personal protection insurance shall have the
2 right to claim, and be subject to a claim, for—

3 (1) driving under the influence of alcohol or ille-
4 gal drugs (as those terms are defined under applica-
5 ble State law); or

6 (2) intentional misconduct.

7 (e) PRIORITY OF BENEFITS.—A person who is in-
8 sured under the personal protection system or tort mainte-
9 nance system under section 5(a) may only claim benefits
10 under such coverage up to the limits selected by or on
11 behalf of such person in the following priority:

12 (1) The coverage under which the injured per-
13 son was an insured at the time of the accident.

14 (2) The coverage of a motor vehicle involved in
15 the accident, if the person injured was an occupant
16 of, or was struck as a pedestrian by, such motor ve-
17 hicle at the time of the accident, except that such
18 person shall not recover under the coverage of both
19 paragraph (1) and this paragraph.

20 (f) SUBROGATION RIGHTS.—A personal protection
21 insurer is subrogated, to the extent of the obligations of
22 that insurer, to all of the rights of the persons insured
23 with personal protection insurance issued by the insurer
24 with respect to an accident caused in whole or in part,
25 as determined by applicable State law, by—

- 1 (1) the negligence of an uninsured motorist;
- 2 (2) operating a motor vehicle under the influ-
- 3 ence of alcohol or illegal drugs;
- 4 (3) intentional misconduct; or
- 5 (4) any other person who is not affected by the
- 6 limitations on tort rights and liabilities under this
- 7 Act.

8 (g) RIGHTS OF LAWFULLY UNINSURED PERSONS.—
9 Nothing in this Act shall be construed to affect the tort
10 rights of any person lawfully uninsured under the terms
11 of an applicable State law for insurance under either the
12 personal protection system or tort maintenance system
13 under section 5(a).

14 (h) RIGHTS OF PERSONS OCCUPYING MOTOR VEHI-
15 CLES WITH FEWER THAN 4 LOAD-BEARING WHEELS.—
16 Nothing in this Act shall be construed to affect the tort
17 rights of a person who occupies a motor vehicle with fewer
18 than 4 load-bearing wheels or an attachment thereto, un-
19 less an applicable contract for personal protection insur-
20 ance under which that person is insured specifies other-
21 wise. The preceding sentence applies without regard to
22 whether the person is otherwise legally insured for per-
23 sonal protection insurance or tort maintenance coverage.

24 (i) RENEWAL OR CANCELLATION.—An insurer shall
25 not cancel, fail to renew, or increase the premium of a

1 person insured by the insurer solely because that insured
2 person or any other injured person made a claim—

3 (1) for personal protection insurance benefits;

4 or

5 (2) if there is no basis for ascribing fault to the
6 insured or one for whom the insured is vicariously
7 liable, for tort maintenance coverage.

8 Such an insurer shall also not cancel an insurance policy,
9 fail to renew it, or increase its premium if applicable State
10 law prohibits such action.

11 (j) IMMUNITY.—Unless an insurer or an insurance
12 agent willfully and intentionally misrepresents the avail-
13 able choices or willfully and with intent to defraud induces
14 the election of one motor vehicle insurance system de-
15 scribed in paragraph (1) over the other and such misrepre-
16 sentation or inducement is the proximate cause of the cus-
17 tomer's election or failure to elect, no insurer, insurance
18 agent or broker, insurance producer representing a motor
19 vehicle insurer or insured, automobile residual market
20 plan, insurance consultant or other person licensed by the
21 State to solicit or advise regarding the purchase of insur-
22 ance, attorney licensed to practice law within a State, or
23 any employee of the foregoing, shall be liable in an action
24 for damages on account of—

25 (1) an election of—

1 (A) the tort maintenance system under
2 section 5(a); or

3 (B) the personal protection system under
4 section 5(a); or

5 (2) a failure to make a required election.

6 **SEC. 7. RULES OF CONSTRUCTION.**

7 Nothing in this Act shall be construed—

8 (1) to waive or affect any defense of sovereign
9 immunity asserted by any State under any law or by
10 the United States;

11 (2) to affect the awarding of punitive damages
12 under any State law;

13 (3) to preempt State choice-of-law rules with re-
14 spect to claims brought by a foreign nation or a citi-
15 zen of a foreign nation;

16 (4) to affect the right of any court to transfer
17 venue, to apply the law of a foreign nation, or to dis-
18 miss a claim of a foreign nation or of a citizen of
19 a foreign nation on the ground of inconvenient
20 forum;

21 (5) subject to paragraph (1), to create or vest
22 jurisdiction in the district courts of the United
23 States over any motor vehicle accident liability or
24 damages action subject to this Act which is not oth-
25 erwise properly in the United States District Court;

1 (6) to prevent insurers and insureds from con-
2 tracting to limit recovery for lost wages and income
3 under personal protection coverage in such manner
4 that only 60 percent or more of lost wages or income
5 is covered;

6 (7) to prevent an insurer from contracting with
7 personal protection insureds, as permitted by appli-
8 cable State law, to have submitted to arbitration any
9 dispute with respect to payment of personal protec-
10 tion benefits;

11 (8) to relieve a motorist of the obligations im-
12 posed by applicable State law to purchase tort liabil-
13 ity insurance for bodily injury to protect third par-
14 ties who are not affected by the immunities under
15 this Act;

16 (9) to preclude a State from enacting, for all
17 motor vehicle accident cases including cases covered
18 by this Act, a minimum dollar value for defined
19 classes of cases involving death or serious bodily in-
20 jury;

21 (10) to preclude a State from providing that
22 forms of insurance other than those listed in section
23 5(b)(3) shall be subtracted from personal protection
24 insurance benefits otherwise payable for injury if the

1 State on the date of the enactment of this Act allows
2 for such subtraction;

3 (11) to preclude a State from enacting a law
4 that—

5 (A) allows litigation by tort maintenance
6 insureds against personal protection insureds
7 for economic and noneconomic loss; and

8 (B) assures through a reallocation device
9 that the advantage of tort claim waivers by per-
10 sonal protection insureds against tort mainte-
11 nance insureds is reflected in the premiums of
12 personal protection insureds;

13 (12) to alter or diminish the authority or obli-
14 gation of the Federal courts to construe the terms
15 of this Act;

16 (13) to permit any person to offer, sell, or so-
17 licit the purchase of insurance, including personal
18 protection insurance or tort liability insurance, with-
19 out fully complying with all State insurance laws ap-
20 plicable to the offering, sale, or solicitation of insur-
21 ance;

22 (14) to preclude a State from enacting a law re-
23 lating to the licensure, qualification, testing, exam-
24 ination, and continuing education of persons author-
25 ized to offer, sell, or solicit the purchase of personal

1 protection insurance and tort liability insurance in
2 the State; or

3 (15) to create any additional claims not cur-
4 rently in State law to allow a business which has an
5 employee injured in a vehicle of the business to
6 bring an action against the auto insurer of the busi-
7 ness for recovery of business or economic or non-
8 economic losses because of the injury to the em-
9 ployee.

10 **SEC. 8. APPLICABILITY TO STATES; CHOICE OF LAW; AND**
11 **JURISDICTION.**

12 (a) ELECTION OF NONAPPLICABILITY BY STATES.—
13 This Act shall not apply with respect to a State if such
14 State enacts a statute that—

15 (1) cites the authority of this subsection;
16 (2) declares the election of such State that this
17 Act shall not apply; and
18 (3) contains no other provision.

19 (b) NONAPPLICABILITY BASED ON STATE FIND-
20 ING.—

21 (1) IN GENERAL.—This Act shall not apply
22 with respect to a State, if—
23 (A) the State official charged with jurisdic-
24 tion over insurance rates for motor vehicles
25 makes a finding that the statewide average

1 motor vehicle premiums for bodily injury insur-
2 ance in effect immediately before the effective
3 date of this Act will not be reduced by an aver-
4 age of at least 30 percent for persons choosing
5 personal protection insurance (without including
6 in the calculation for personal protection
7 insureds any cost for uninsured, underinsured,
8 or medical payments coverages);

9 (B) a finding described under subpara-
10 graph (A) is supported by evidence adduced in
11 a public hearing and reviewable under the appli-
12 cable State administrative procedure law; and

13 (C) a finding described under subpara-
14 graph (A) and any review of such finding under
15 subparagraph (B) occurs not later than 90 days
16 after the date of enactment of this Act.

17 (2) COMPARISON OF BODILY INJURY PRE-
18 MIUMS.—For purposes of making a comparison
19 under paragraph (1)(A) of premiums for personal
20 protection insurance with preexisting premiums for
21 bodily injury insurance (in effect immediately before
22 the date of enactment of this Act), the preexisting
23 bodily injury insurance premiums shall include pre-
24 miums for—

1 (A) bodily injury liability, uninsured and
2 underinsured motorists' liability, and medical
3 payments coverage; and

4 (B) if applicable, no-fault benefits under a
5 no-fault motor vehicle law or add-on law.

6 (c) CHOICE OF LAW.—In disputes between citizens
7 of States that elect nonapplicability under subsection (a)
8 and citizens of States that do not make such an election,
9 ordinary choice of law principles shall apply.

10 (d) JURISDICTION.—This Act shall not confer juris-
11 diction on the district courts of the United States under
12 section 1331 or 1337 of title 28, United States Code.

13 (e) STATUTES OF LIMITATIONS.—Nothing in this Act
14 shall supersede an applicable State law that imposes a
15 statute of limitations for claims covered under this Act,
16 except that such statute shall be tolled during the period
17 wherein any personal protection or tort maintenance bene-
18 fits are paid.

19 **SEC. 9. EFFECTIVE DATE.**

20 This Act shall take effect 90 days after the date of
21 enactment of this Act.

○